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Donna A. Bradshaw

# FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of )  
RAINBOW BROADCASTING )  
COMPANY )  
For an Extension of Time to )  
Construct, )  
and )  
For an Assignment of its )  
Construction Permit for )  
Station WRBW(TV), )  
Orlando, Florida )

GC Docket No. 95-172

File No. BMPCT-910625KP

File No. BPMCT-910125KE

File No. BTCCT-911129KT

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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Date: June 28, 1996

## HERITAGE REPORTING CORPORATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:	)	
	)	GC Docket No. 95-172
RAINBOW BROADCASTING	)	
COMPANY	)	File No. BMPCT-910625KP
	)	File No. BPMCT-910125KE
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Construct,	)	
	)	
and	)	
	)	
For an Assignment of its	)	
Construction Permit for	)	
Station WRBW(TV)	)	
Orlando, Florida	)	

Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Friday,  
June 28, 1996

The parties met, pursuant to the notice of the  
Judge, at 9:01 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Administrative Law Judge

APPEARANCES:

On behalf of Federal Communication Commission:

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APPEARANCES: (Continued)

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On Behalf of Rainbow Broadcasting, Ltd.:

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On Behalf of Press Broadcasting Co., Inc.:

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(202) 833-4190

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Joseph Rey	--	--	946	983	974
(Resumed)			993	984	989
				992	

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Press:</u>			
18 (Reformed)	(Prev.)	946	--
<u>Rainbow:</u>			
9	948	--	973
10	949	--	973
11	980	--	982
12	996	--	999

Hearing Began: 9:01 a.m.

Hearing Ended: 10:13 a.m.

P R O C E E D I N G S

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JUDGE CHACHKIN: On the record.

Mr. Eisen, who is going to conduct redirect examination?

MR. EISEN: Ms. Polivy.

JUDGE CHACHKIN: Ms. Polivy.

And leading questions should be avoided since this is redirect examination.

MS. POLIVY: Yes, sir.

JUDGE CHACHKIN: All right, we are ready to proceed.

MR. COLE: Excuse me, Your Honor, as two preliminary matters just to clean our matters.

The court reporter yesterday advises we are one copy shy of Press Exhibit No. 17. We have given him a clean copy of that this morning.

Also, during yesterday's session we withdrew the originally tendered Press No. 18, redacted or reformed it to delete much of the attached material, and have provided the reporter, Your Honor, and the other parties of the reformed Press No. 18 this morning.

So those pieces of housekeeping, I think, are taken care of this morning.

JUDGE CHACHKIN: All right.

MR. COLE:

1 JUDGE CHACHKIN: And I believe Press 18 has been  
2 received as reformed. So it's just a matter of  
3 redistributing.

4 JUDGE CHACHKIN: Just to make it clear on the  
5 record, counsel is correct, Press Exhibit 18 as reformed is  
6 received.

7 MR. COLE: Thank you, Your Honor.

8 (The document referred to,  
9 having been previously marked  
10 for identification as Press  
11 Exhibit No. 18, was received  
12 into evidence as a reformed  
13 document.)

14  
15 JUDGE CHACHKIN: And what happened with 17?

16 MR. COLE: There was just -- that had nothing to  
17 do with whether or not it was admissible. It's just we were  
18 one copy shy, and the court reporter had asked us to provide  
19 an extra clean copy to him. His second copy had been used,  
20 I think, by trial staff. So we have taken care of that and  
21 the record should be complete at this point.

22 JUDGE CHACHKIN: All right. Go ahead, Ms. Polivy.

23 REDIRECT EXAMINATION

24 BY MS. POLIVY:

25 Q Mr. Rey, the Rainbow lease which is in this -- the

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1 exhibit is Rainbow Exhibit 6, that was signed in 1986.

2 Did Rainbow pay rent that entire time?

3 MR. COLE: Objection. Outside the scope.

4 MS. POLIVY: He was questioned about the lease,  
5 Your Honor. We are entitled to --

6 JUDGE CHACHKIN: Well, I will permit the question.

7 THE WITNESS: It paid rent since I believe it was  
8 October of '86, began paying rent in October '86.

9 BY MS. POLIVY:

10 Q How much rent did it pay between '86 and '93,  
11 round figures?

12 A Approximately a half a million dollars.

13 Q At the time you entered into that lease you had  
14 not yet been awarded a construction permit.

15 Why did you undertake such a significant cost  
16 before you had initial authorization?

17 A At the time the landlord represented that they had  
18 only two television antenna slots available; one about 1500  
19 feet and one about 1400 feet. They also represented that  
20 they were negotiating with other people, and that it was  
21 first come, first serve. And if I wanted the 1500 feet  
22 slot, I had better hurry up and sign the lease.

23 Q Was that representation later made a part of the  
24 lawsuit against Guy Gannett?

25 A Yes, it was.

1 MS. POLIVY: Your Honor, I am handing the court  
2 reporter two copies of a document entitled "Amended  
3 Complaint for Damages and Injunctive Relief." It consists  
4 of 20 pages. I will bring to the party's attention that  
5 Exhibit 2 that's attached to that document is the lease  
6 itself. We have duplicated only the first page of the lease  
7 because it's already in evidence as Rainbow Exhibit 6.

8 JUDGE CHACHKIN: And this is Rainbow Exhibit 9?

9 MS. POLIVY: This will be Rainbow Exhibit 9, Your  
10 Honor. I ask that it be identified.

11 JUDGE CHACHKIN: The document described is marked  
12 for identification as Rainbow Exhibit 9.

13 (The document referred to was  
14 marked for identification as  
15 Rainbow Exhibit No. 9.)

16 MS. POLIVY: Your Honor, I am now handing to the  
17 court reporter two copies of a two-page document entitled  
18 "Order on Status Conference in the Rey v Gannett" case in  
19 Florida.

20 And I ask that that be marked as Rainbow Exhibit  
21 No. 10.

22 JUDGE CHACHKIN: The document described will be so  
23 marked.

24  
25



1 (The document referred to was  
2 marked for identification as  
3 Rainbow Exhibit No. 10.)

4 MS. POLIVY: I would bring to the Court's  
5 attention that number one in the order on status conference  
6 refers to the motion to amend complaint, which I have  
7 identified as Rainbow Exhibit 9. That's the only purpose  
8 for which I am offering it, is that it shows the complaint  
9 was amended.

10 I do not have at this time a certified copy of the  
11 amended complaint. If the parties so wish, we will be glad  
12 to secure one, and replace it.

13 BY MS. POLIVY:

14 Q Mr. Rey, would you turn to page -- the pages are  
15 numbered for the exhibit at the top of the page.

16 MR. COLE: Excuse me, Your Honor. Before we  
17 proceed with the examination of the exhibit, I would like to  
18 raise a question. The numbered page 17 in this exhibit  
19 appears to be a letter on Guy Gannett Publishing Company  
20 stationery from James Baker to Joseph Rey dated July 9,  
21 1991.

22 And while I have not had an opportunity right now  
23 to double check, it appears to me to be the letter to which  
24 Mr. Rey was responding in one of the documents which was  
25 produced on the day of document -- of exhibit exchange,

1     which we were advised by counsel for Rainbow was not  
2     available to them as of direct case exchange.

3             And I am curious as to why it is being produced  
4     now in an exhibit if it was not previously available to  
5     them, and it appears to have been attached to a document  
6     that they had in their files?

7             MS. POLIVY: Your Honor, we were unaware of the  
8     document and that it was attached.

9             MR. COLE: Well, Your Honor --

10            MS. POLIVY: Had we, we would certainly turned it  
11     over to you.

12            MR. COLE: Your Honor, I understand discovery  
13     imposed some obligations on the addressee of the discovery  
14     to search their files, and especially when a specific  
15     request is presented as was the case by Separate Trial Staff  
16     on June 12 for responsive documents relating specifically to  
17     the letters which had been uncovered and disclosed after the  
18     close of discovery.

19            MR. EISEN: But this was a copy of a letter that  
20     was appended to a judicial document. It wasn't something  
21     that was ordinarily in the files of the permittee.

22            JUDGE CHACHKIN: Well, the question is when did  
23     you obtain this judicial document?

24            MS. POLIVY: Well, Your Honor, the judicial  
25     document has been in the files, but we did not notice the

1 letter in fact until this instant. We would certainly have  
2 turned it over had we done so.

3 MR. COLE: May I inquire which files it was in,  
4 Your Honor?

5 MS. POLIVY: It was in our dead files.

6 MR. SILBERMAN: Your Honor, may I just speak to  
7 that?

8 JUDGE CHACHKIN: Yes.

9 MR. SILBERMAN: Yes, I had written to Mr. Eisen  
10 when they apprised us that letters that were produced on  
11 June 11th had been recently discovered, and I specifically  
12 asked for documents that were incoming that were responded  
13 to by letter that were supplied on June 11th to Rainbow.  
14 And I was advised that they looked at the files and they  
15 couldn't find them.

16 Now, we see they are introducing it as an exhibit  
17 when it was there all along.

18 MR. EISEN: The word "were there," Silberman,  
19 needs some explanation. And, of course, he's correct, that  
20 is the procedure that we followed. And when I wrote back to  
21 him I explained that Rainbow, the Rainbow principals had  
22 accessed their files in Florida to look through any  
23 correspondence that they might have had that would have  
24 included the letters covered by Mr. Silberman's request.

25 This was found not there, but in counsel's dead

1 files with regard to other documents that existed.

2 MS. POLIVY: And, Your Honor, I will --

3 JUDGE CHACHKIN: Well, the question is why wasn't  
4 counsel's dead files also reviewed?

5 MS. POLIVY: Well, Your Honor, we did look in our  
6 files. The fact of the matter was that I did not look at  
7 the attachments of the amended complaint.

8 JUDGE CHACHKIN: You apparently didn't. The  
9 question is why not since you were under an obligation to  
10 make a search?

11 MS. POLIVY: Because it did not occur to me, Your  
12 Honor, that there would be any correspondence there. I did  
13 not look at this until last night; in fact, until this  
14 morning when Mr. Cole raised the question. I was unaware  
15 that the letter that he had been seeking was there.

16 JUDGE CHACHKIN: Well, Mr. Silberman, Mr. Cole,  
17 you are absolutely right, these documents should have been  
18 produced earlier. Counsel had an obligation to review all  
19 the documents, and not just assume it's not there.

20 The question is what relief do you want me to do?

21 MS. POLIVY: Well, the question is what damage  
22 there was, Your Honor.

23 JUDGE CHACHKIN: Well, I am going to find out from  
24 the parties what relief they are seeking now. But you are  
25 absolutely right, counsel had an obligation, and the excuses

1 given is not sufficient, that they didn't think it was  
2 there. They had documents. They should have reviewed  
3 everyone of the pages. If they reviewed it, obviously, the  
4 document at all, they would have know about attachments to  
5 it and they should have looked for the attachments.

6 MS. POLIVY: Your Honor, I reviewed the document  
7 last night.

8 JUDGE CHACHKIN: Well, I know you did, but the  
9 question is why didn't you review it at an earlier stage.

10 MS. POLIVY: Your Honor, I did not look at every  
11 attachment of every lawsuit that was filed by someone else.

12 JUDGE CHACHKIN: Well, you found it important to  
13 look for it last night. Then obviously you knew about its  
14 existence.

15 MS. POLIVY: I wasn't looking for correspondence,  
16 Your Honor. I was looking for an amended complaint.

17 JUDGE CHACHKIN: I understand. But by looking at  
18 the amended complaint, you should have been aware that there  
19 were attachments, and looked at the attachments.

20 MS. POLIVY: I'm sorry, I told the Court --

21 JUDGE CHACHKIN: I know you obviously didn't do  
22 it. The question is what do the parties want to do.

23 MR. SILBERMAN: Well, Your Honor, it seems that  
24 the letter, page 18 is what we are referring to.

25 JUDGE CHACHKIN: All right, what do you --

1 MR. SILBERMAN: That letter is already in the  
2 record because it's been introduced by, I believe, Mr. Cole  
3 on behalf of Press.

4 JUDGE CHACHKIN: You brought it to my attention  
5 and I agree with you counsel was wrong in not reviewing all  
6 the material. She had an obligation under discovery  
7 obligations to review all the material.

8 MR. SILBERMAN: The letter is already in the  
9 record, Your Honor. So I think --

10 JUDGE CHACHKIN: Well, what sanctions are you  
11 seeking? You brought it to the Court's attention. It's now  
12 in the record. There is nothing to ---

13 MR. COLE: And, Your Honor, I have to say that I  
14 am surprised by this. I have not given a whole lot of  
15 thought to it. But it seems to me that, first, Trial Staff  
16 is correct. The particular letter in question is in the  
17 record already so there is no real harm as far as that  
18 document is concerned.

19 But the real question that now exists is whether  
20 there are other documents that also haven't been located,  
21 that are sitting out there in some files that were either  
22 overlooked or not searched or what have you, and at this  
23 point we have absolutely no way of knowing that. And I  
24 think that in light of what we have seen so far, it may be  
25 appropriate to allow Press and the Trial staff to have

1 substantially greater access to the files of Rainbow so we  
2 can make our own search without worrying about whether or  
3 not documents are going to be overlooked or not found in an  
4 appropriate manner.

5 JUDGE CHACHKIN: What documents do you want to  
6 look at?

7 MR. COLE: I have no clue, Your Honor. The fact  
8 of the matter is I didn't know the document that were turned  
9 up by Rainbow on June 11 existed. I had asked for them, and  
10 they should have been produced and they weren't produced.  
11 And then all of a sudden on June 11 they are produced. We  
12 asked for more documents -- the trial staff asked for more  
13 documents which were responsive, and we were told they  
14 couldn't be found, and all of a sudden this turns up and it  
15 could have been found in their file.

16 MS. POLIVY: Mr. Cole, are you asking for access  
17 too Renouf & Polivy's files?

18 MR. COLE: Wherever these files came from.

19 JUDGE CHACHKIN: Where did these files come from?

20 MS. POLIVY: In my file, Your Honor, in our dead  
21 files.

22 JUDGE CHACHKIN: Well, do you have in your dead  
23 files, do you have other matters relating to this dispute?

24 MS. POLIVY: Not that I know of, Your Honor.

25 MR. COLE: But, Your Honor, she didn't know about

1 this one either until this morning or until last night.

2 MR. SILBERMAN: One approach may be, Your Honor, I  
3 would suggest that before we go forward and impose sanctions  
4 or do something, is that have counsel for Rainbow  
5 Broadcasting Company research her files, determine that she  
6 has found nothing that comes within the scope of what's been  
7 requested, and then certify -- you know, just tell the Court  
8 that she has found or has not found anything further, and  
9 that would satisfy us.

10 MR. COLE: Your Honor, I'm not sure that would  
11 satisfy Press, given the fact that we have requested Rainbow  
12 to do a search initially in discovery, and have gotten no  
13 responses. And then Trial Staff separately asked Rainbow on  
14 June 12th to undertake a specific research with respect to  
15 specific documents; gotten no responses. And now we are  
16 finding out that the documents were apparently not reviewed  
17 with any particular thoroughness until last night.

18 Perhaps, Your Honor, what would be useful would be  
19 if Ms. Polivy objects to review of her files by opposing  
20 counsel, if she could provide an index to Your Honor or  
21 index to opposing counsel of materials in her files related  
22 to Rainbow so that we could make at least a -- have some  
23 clue as to what's in there. And if there are documents  
24 which appear to us to be relevant, ask Ms. Polivy to produce  
25 them to Your Honor to make sure there is no attorney/client



1 privilege problems, and then go forward at that point.

2 JUDGE CHACHKIN: Any response, Ms. Polivy?

3 MS. POLIVY: Yes. We have gone from the fantastic  
4 to the absurd, Your Honor. There is in our dead file an  
5 amended complaint, to which there was attached something  
6 that was already known to the opposite side. There is no  
7 damage whatsoever. I apologize for any duty that we did not  
8 meet. We made a good faith effort to comply with all of the  
9 discovery orders. There is no warrant whatsoever for the  
10 kind of burdensome, intrusive, wholesale tramping through  
11 law firm files that Mr. Cole is suggesting.

12 MR. COLE: Your Honor, with respect to the  
13 representation concerning their compliance with discovery, a  
14 matter which was not brought to Your Honor's attention arose  
15 during the deposition of Leticia Jaramillo. As a threshold  
16 question I showed her the two document requests, which had  
17 been propounded or directed to Rainbow by the Trial Staff  
18 and by Press, and asked her if she had ever seen that. She  
19 said no.

20 I then asked her if anyone had ever asked her to  
21 search her files for any documents which might be responsive  
22 to those requests. She said no.

23 I was surprised, but then there was a follow-up  
24 question did she have any documents in her files. The  
25 answer was no, and therefore I figured at that point it was

1 a harmless problem, although certainly problematic in my  
2 view.

3 What we are hearing -- then when additional  
4 documents surfaced on exchange date, it was increasingly  
5 troublesome, and I am very troubled by this because this is,  
6 you know, we have no way of knowing what else is in their  
7 files.

8 MR. SILBERMAN: Your Honor, may I just add a point  
9 here?

10 I think what Ms. Polivy said would have a  
11 different spin on it if we hadn't had the June 11 -- I will  
12 call it the June 11th letter from counsel for Rainbow  
13 Broadcasting Company saying they just found these letters  
14 and they are going to introduce them into evidence. And I  
15 responded by saying we want -- please provide us with the  
16 incoming correspondence and any related materials. I  
17 believe that was the language I used in my letter.

18 With that being said, I think they had an  
19 additional burden of making a more careful search since they  
20 obviously have overlooked that, and I believe that is what  
21 they have said. And so I think that something more than  
22 just "I have looked at my files" is required here.

23 MR. EISEN: Your Honor, may I say something?

24 JUDGE CHACHKIN: Yes.

25 MR. EISEN: I agree with Mr. Silberman. I think

1 there was a need for a heightened search for the documents  
2 that were covered by these letters that he described. But  
3 the request for correspondence and other materials, that's  
4 true.

5 What came to mind immediately under the  
6 circumstances was going to the permittee, asking the  
7 permittee, asking Mr. Rey to access all correspondence files  
8 that he had again, despite the fact that studies had moved  
9 close, they were boxes, and he did. He did it during that  
10 week and he did it again over the weekend. And he found  
11 what he found, which was absolutely nothing.

12 This is not a document that appears in some  
13 correspondence file. I am not denying the fact that Rainbow  
14 Broadcasting Company had an obligation to make a good faith  
15 effort to search for those things that Mr. Silberman asked.  
16 I think they did.

17 This was a document that was appended to an  
18 amended complaint that was in Ms. Polivy's dead files that,  
19 frankly, although it could have been covered by the request,  
20 is something that really didn't come to mind.

21 So if there is any element, you know, any  
22 argument of bad faith, I hope you understand that that's not  
23 what happened; that there was a heightened search undertaken  
24 by Mr. Rey personally, and the thought that there was  
25 something that existed in counsel's dead file in a legal

1 document that was not part of the correspondence files just  
2 never came to mind.

3 MR. COLE: Your Honor, if I might point out on  
4 that, Press, in its initial document request, asked of  
5 Rainbow to produce a number of matters out of the Rainbow  
6 litigation in Miami. Your Honor declined to order them to  
7 do so, largely on the representation that that matter had  
8 been handled by Florida counsel and not by Washington, D.C.  
9 counsel who are here. Therefore, I would have no -- I would  
10 have no harder access than they would to get to the files.

11 As it turned out, as I'm looking at this document  
12 in front of me, Ms. Polivy was counsel of record, or was a  
13 counsel of record in this amended complaint, which had been  
14 exchanged this morning.

15 MR. SILBERMAN: Excuse me, Mr. Cole.  
16 Lead counsel.

17 MR. COLE: Apparently lead -- well, she certainly  
18 was the first person named on the amended complaint. And  
19 now I gather she is advising the Court that she has dead  
20 files which include -- which included at least this document  
21 and possibly others.

22 So it is not accurate, I think, to suggest --

23 MS. POLIVY: Your Honor.

24 MR. COLE: -- that this is just a formal paper  
25 that may have ended up in their files somehow. This

1     apparently was a document in which she participated in the  
2     preparation, and as to which she -- I would have expected  
3     her to be aware that there was correspondence attached to  
4     it.           MS. POLIVY: Your Honor, as this question came up  
5     before, I advised you on the complaint, we were not counsel.  
6     Our name was put on it as a courtesy. We didn't sign them.  
7     We never saw these things before they were filed. We did  
8     not participate.

9                You know, for Mr. Silberman to make a leap of  
10    faith that we are lead counsel because somebody as a  
11    courtesy put our name on first, it isn't true.

12               JUDGE CHACHKIN: Well, what I am going to do is  
13    follow the suggestion of Mr. Silberman, namely, for counsel  
14    to research her dead files.

15               MS. POLIVY: We will be glad to do so, Your Honor.

16               JUDGE CHACHKIN: And certify whether or not there  
17    are any other relevant documents to be produced, and if so,  
18    the documents should be produced posthaste.

19               MS. POLIVY: I will be glad to make another search  
20    for files, Your Honor. I will make a search of all the  
21    attachments.

22               JUDGE CHACHKIN: All right, let's proceed.

23               BY MS. POLIVY:

24               Q     Mr. Rey, would you take a look at page 13?

25               A     Of which document?

1 Q We were on Rainbow Exhibit 9.

2 That is a letter to you from Charles Sanford?

3 A Charles Sanford, that's correct.

4 Q Can you tell us who Charles Sanford was?

5 A Charles Sanford was a vice president for Guy  
6 Gannett in charge of leasing tower space at the time.

7 Q And was this letter written to you before the  
8 lease was signed?

9 A Yes, it was.

10 Q What was your understanding of this letter?

11 A This letter represented that they were negotiating  
12 with other parties, and, again, on the representation that  
13 there was only one antenna slot at 1500 feet and one antenna  
14 slot at 1400 feet, that it was going to be first come, first  
15 serve, I made it clear that I wanted the 1500 foot antenna,  
16 so he made it clear to me that it was first come, first  
17 serve with respect to the 1500 foot antenna space, antenna  
18 space.

19 JUDGE CHACHKIN: I am having difficulty  
20 understanding the purpose of this inquiry.

21 MS. POLIVY: Well, Your Honor --

22 JUDGE CHACHKIN: There is litigation, civil  
23 litigation. What does it have to do with --

24 MS. POLIVY: Mr. Cole asked Mr. Rey wasn't it true  
25 that the litigation was about that Rainbow didn't want to

1 share space with Press.

2 JUDGE CHACHKIN: Yes.

3 MS. POLIVY: And what this litigation is about is  
4 the background of exactly -- it wasn't a question of Rainbow  
5 being greedy and not wanting to put press upon its same  
6 tower site, it was a matter that that was the basis of the  
7 lease in which Rainbow had paid half a million dollars in  
8 rent before they went on the air to preserve their slot.  
9 And that's what this goes to, and I think that in fact --

10 JUDGE CHACHKIN: How is that relevant.

11 MS. POLIVY: Since the question was raised on  
12 cross, we are entitled to show what the circumstances were.

13 JUDGE CHACHKIN: Well, the contention was made  
14 that they had an exclusive lease agreement which gave them  
15 the right, sole right to use this particular slot.

16 MS. POLIVY: Well, Your Honor, I think that the  
17 contention is not simply that they had the sole right, but  
18 that there was fraud in the inducement to that lease if they  
19 did not have the sole right.

20 JUDGE CHACHKIN: As far as I know --

21 MS. POLIVY: And that, I think, is what is  
22 significant here.

23 MR. COLE: Your Honor?

24 JUDGE CHACHKIN: Well, the lawsuit didn't contend  
25 that there was fraud as far as I know.

1 MS. POLIVY: Your Honor.

2 JUDGE CHACHKIN: Whatever it did it's irrelevant.

3 MS. POLIVY: Well, can I ask the witness to turn  
4 to page 8, please?

5 JUDGE CHACHKIN: I mean, there was a lawsuit which  
6 obviously -- is it still pending?

7 MS. POLIVY: It is not still pending. Gannett  
8 settled the case with Rainbow.

9 JUDGE CHACHKIN: But the end result, I assume, was  
10 that they are both sharing that slot.

11 MR. SILBERMAN: Excuse me.

12 May I just ask a question?

13 MS. POLIVY: There was a settlement made, Your  
14 Honor.

15 MR. SILBERMAN: Under numbering, there are numbers  
16 at the top and the bottom.

17 MS. POLIVY: The top numbers are the numbers for  
18 the exhibit. They go consecutively.

19 MR. SILBERMAN: They are the governing numbers.

20 MS. POLIVY: They are the governing numbers, yes.

21 MR. SILBERMAN: Okay, thank you.

22 JUDGE CHACHKIN: It seems to me let's not retry  
23 the litigation which is not before me.

24 MS. POLIVY: Your Honor, I am not trying to retry  
25 the litigation.



1 JUDGE CHACHKIN: Which is not before me, which is  
2 before the court.

3 Go ahead.

4 BY MS. POLIVY:

5 Q Mr. Rey, turn your attention to paragraph 30 on  
6 page 8.

7 Is that statement true and correct, to the best of  
8 your knowledge?

9 MR. COLE: Objection. Irrelevant.

10 JUDGE CHACHKIN: Wait a minute. What is it that  
11 we're talking about now?

12 MS. POLIVY: Page 8 of Exhibit 9.

13 JUDGE CHACHKIN: Page 8 of Exhibit 9?

14 MS. POLIVY: Eight, top of the page.

15 JUDGE CHACHKIN: Is what statement true and  
16 correct?

17 MS. POLIVY: Paragraph 30 explains.

18 MR. COLE: And, Your Honor, I object on the basis  
19 of relevance.

20 MR. SILBERMAN: The Separate Trial Staff also  
21 objects to the relevance.

22 MS. POLIVY: Well, Your Honor, you cannot allow  
23 cross-examination, it seems to me, on the question of  
24 whether or not the tower litigation was in effect voluntary  
25 on Rainbow's part because it just didn't want to share tower